Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20054

In the Matter of	)	
	)	
Telecommunications Services	)	CC Docket No. 95-184
Inside Wiring	)	
	)	
Customer Premises Equipment	)	

COMMENTS OF
MFS COMMUNICATIONS COMPANY, INC.

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Dated: March 18, 1996

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MFS Communications Company, Inc. ("MFS"), by its undersigned counsel and pursuant to Section 1.415 of the Commission's rules, submits these comments in response to the Commission's Notice of Proposed Rulemaking[1] in the above captioned proceeding.

INTRODUCTION AND SUMMARY

As the largest provider of competitive local telecommunications service, MFS strongly supports the Commission's efforts to develop rules that promote customer choice and competition in telecommunications markets. Regulation of and access to inside wiring is a critical competitive issue since it directly affects customers' abilities to access their chosen service provider and affects competitors' abilities to serve their customers. Unbundling network components, mandating cost-based interconnection, ensuring number portability and dialing parity, and mandating collocation will not introduce competition if the incumbent provider has

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[1] *In the Matter of Telecommunications Services Inside Wiring*, Notice of Proposed Rulemaking, CC Docket No. 95-184 (Released January 26, 1996). ("Notice")

exclusive or discriminatory rights to access and use existing inside wiring -- monopoly control of the last 20 feet of the local loop can stymie all other efforts to introduce competition elsewhere in the network.

MFS recommends that the Commission adopt policies to assure parity of access so that customers may freely access their service provider. To implement this policy, MFS recommends that the Commission prohibit discrimination in access to points of demarcation where telecommunications carriers interconnect with their customers. MFS further recommends that the Commission require that building entry charges, if any, be assessed in a non-discriminatory manner and that carriers be allowed to explicitly reflect those charges on their customers' bills. If entry into a building and access to demarcation points is not possible or economically feasible for new entrants, pursuant to the unbundling provisions of the Telecommunications Act, incumbent telephone carriers should interconnect with the new entrants and allow the new entrants to purchase the unbundled components of incumbent's network necessary to reach a customer's point of demarcation. MFS recommends that the Commission enlist state commissions and local franchising authorities to aid in the enforcement of nondiscrimination requirements similar to how the Commission' rules involve state commissions in informally resolving complaints about interference with hearing aids. Because competitors serving the same building may share wiring facilities, MFS also recommends vigorous enforcement of rules designed to minimize interference between facilities that share the same ducts, conduits, risers, or cabling. Finally, MFS recommends that the Commission review its inside wiring rules and policies every three years, or sooner, to accommodate technological changes and as may be required by the evolution of competition.

I. COMPETITIVE SERVICE PROVIDERS SHOULD HAVE NON-DISCRIMINATORY ACCESS TO INSIDE WIRING FACILITIES AND POINTS OF ENTRY

A. The Commission Should Adopt Policies Designed to Assure Parity of Access Rights

The Commission succinctly expressed the key competitive issue of inside wiring as "parity of access rights." Specifically,

> Parity of access rights to private property may be a necessary predicate for any attempt to achieve parity in the rules governing cable and telephone network inside wiring, because without access to the premises, the inside wiring rules and proposal discussed in this NPRM will not even be implicated. An inequality in access can unfairly benefit one provider over another. For instance, if one service provider has an unrestricted right of access to private property -- even over the objection of the property owner -- that service provider would be able to compete for individual subscribers in every multiple dwelling unit building, private housing development and office building, while the provider without such a right could only compete in those buildings in which it had managed to obtain the property owner's consent.[2]

It is critical for the development of competition that the Commission's inside wiring rules ensure parity of access rights.[3] Competition will be slow to develop, if it develops at all, if building owners freely allow incumbent service providers access to wiring but deny access to new entrants or charge new entrants for access rights given to incumbents for no charge. Likewise, a building owner that fails to promptly provide competitive carriers with building access impedes

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2 Notice at ¶ 61.

3 It is important to note that parity of access is a competitive issue typically in instances involving buildings or campuses with several tenants and other circumstances where access to a building is controlled by someone other than the telecommunications service provider's customer. Inside wiring for single dwelling residences or stand-alone business customers do not as often present competitive problems since demarcation points for such customers are often accessible by all competitors. Competitive issues more often arise in instances where a building owner is not the customer choosing among competing telecommunications providers. For example, a tenant in an office building that picks MFS to be its telecommunications provider cannot receive service from MFS unless MFS gets permission from the landlord to access the building's wiring, ducts, and cable risers that serve the tenant. Similarly, if a landlord fails to promptly provide nondiscriminatory access to MFS, MFS may fail to meet its customer needs and fail to convince the tenant to use MFS's services at all.

competition by making it harder for customers to change service providers. Said differently, discriminatory access rights are a barrier to entry.

The Telecommunications Act of 1996[4] prohibits barriers to entry. Specifically,

> No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.[5]

The Telecommunications Act empowers the Commission to preempt the enforcement of any "statute, regulation, or legal requirement" that violates this provision.[6] Clearly, a statute or regulation that grants an incumbent telephone company or cable television company exclusive access rights would be an impermissible barrier to entry. When a property owner allows an incumbent service provider exclusive access to its inside wiring, but denies new entrants the same access rights, the owner effectively creates an exclusive easement. Enforcement of such an easement should be preempted by the Commission as a legal requirement that prohibits new market entrants from providing telecommunications services.

Existing building cables, riser cables, and common areas including ducts and racks used by the incumbent service provider should be made available to all providers on a non-discriminatory basis. If a building owner allows the incumbent service provider to install its cable in ducts or building risers without charge because the incumbent is a common carrier or the franchised local telephone company, then the same access rights should be extended to new entrants. Under the Telecommunications Act, new entrants providing telecommunications

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4 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Telecommunications Act").

5 Telecommunications Act §253(a).

6 Telecommunications Act §253(d).

services are considered common carriers,[7] and have been granted the same common carrier rights enjoyed by the incumbent service provider, such as access to buildings and rights of way.

In many multiunit buildings, the point of demarcation, where tenants' telephone wiring terminates and interconnects with the telephone company's equipment, is at a common single location, typically in the basement of the building or at some other "minimum point of entry" as determined by the telephone company's "reasonable and nondiscriminatory standard operating practices."[8] In such cases, providing non-discriminatory access to that wiring terminal should not be problematic for multi-tenant property owners. In buildings built after August 13, 1990, unless the telephone company elects to establish the point of demarcation at the minimum point of entry, a building owner may establish the point or points of demarcation for the building.

The most direct method to promote equal access is a rule that prohibits discrimination against telecommunications carriers seeking access to demarcation points. However, by itself, such a rule may be impractical and intrusive as it would involve the Commission micro-managing the market by resolving complaints by telecommunications carriers against building owners. MFS suggests augmenting a general nondiscrimination rule with two requirements:

1. ***Flow Through of Building Charges***. If a building owner provides access to the incumbent telephone company for no charge, then under a nondiscrimination rule it

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7 Telecommunications Act §3(49). "The term 'telecommunications carrier' means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services ... A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services..." [emphasis added]

8 47 C.F.R. §68.3 (1995). Specifically, the minimum point of entry is "the closest practicable point to where the wiring crosses a property line or enters a multiunit building or buildings" as specified in the telephone company's reasonable and nondiscriminatory standard operating practices. In buildings existing as of August 13, 1990, the demarcation point is determined by the telephone company's standard operating practices (*i.e.*, the minimum point of entry) provided that the demarcation point cannot be more than 12 inches inside the customer's premises. In buildings built after August 13, 1990, if the telephone company elects, the demarcation point is at the minimum point of entry. If the telephone company does not elect such a demarcation point, the building owner may establish single or multiple demarcation points, but never further than 12 inches inside a customer's premises.

should provide access to new entrants for no charge. However, if a building owner assesses charges for entry into its building, those charges should apply equally to all wireline service providers in the building, and such service providers should be allowed to explicitly reflect those building charges on their customers' bills. MFS recommends that the charges generally be proportional to a carrier's customer base or its facilities. For example, if a building owner charges NYNEX $100 for access to its building to provide service to twenty tenants in that building, then the building owner may charge MFS $15 for access if MFS begins to provide service to three of those twenty customers. Both NYNEX and MFS may pass through their respective charges in the form of explicit surcharges on their customers' bills.

2. ***Unbundled Access to Local Loops***. In some instances it will not be practical or possible for competitive local telephone companies to install their own wiring to reach a demarcation point. For example, an underground conduit that runs into the minimum point of entry may be full, and a new entrant may be faced with drilling through a foundation wall to place a new conduit to encase a single circuit to serve a few customers in the building. In that instance, the incumbent telephone company should be required to provide nondiscriminatory interconnection and unbundled access to that portion of its network that allows connection with the customer's demarcation point. Interconnection at any technically feasible point within a carrier's network and unbundled access are explicitly required of incumbent local telephone companies in the

Telecommunications Act[9] at the nondiscriminatory rate offered to others for similar functionality,[10] a rate negotiated by the interconnecting carriers, or the incremental cost of the unbundled network element.[11]

MFS's proposal is practical and economically efficient. As a practical matter, in most circumstances, building owners will be reluctant to assess arbitrary, discriminatory access charges if they know that such charges will be reflected on tenants' telecommunications service bills. By requiring that building owners provide nondiscriminatory access at no charge to new entrants if they presently provide building access at no charge to the incumbent, MFS's proposal also ensures that building owners will not exploit their economic position and retard competition by assessing unnecessary building access charges. Likewise, telecommunications carriers have an economic incentive to minimize payments to landlords and can be expected to work with building owners to minimize building access charges. In instances where the costs of accessing a customer's demarcation point are prohibitively large, or where a building owner

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9 Telecommunications Act §§251(c)(2) and 251(c)(3). Section 251(c)(3) defines the duty to provide unbundled access as "[t]he duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory .. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."

10 Telecommunications Act §252(i) requires that "[a] local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

11 Telecommunications Act §252(d)(1) provides that "[d]eterminations by a State commission of ... the just and reasonable rate for [unbundled] network elements ... (A) shall be -- (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the ... network element ..., and (ii) nondiscriminatory, and (B) may include a reasonable profit." [emphasis added] Thus, the Telecommunications Act provides that if interconnecting carriers are unable to arrive at a negotiated rate for the unbundled elements and State commissions are asked to arbitrate the issue, State commissions shall determine a rate that is nondiscriminatory and based on the costs of providing the service, but not based on revenue requirements or traditional rate base regulation. The rate may or may not include a reasonable profit. For example, a rate for an unbundled element cannot contain maximum contribution designed to facilitate recovery of a specific revenue requirement or minimize other service rates, as has sometimes been the pricing philosophy used for new services.

simply refuses to allow new entry, a new entrant may be forced provide service to customers by purchasing the unbundled network components of the incumbent's network that allows access to a customer's point of demarcation.

It is important to emphasize that unbundled access to the incumbent's facilities may be second best, and the Commission's primary policy objective should be to ensure nondiscriminatory building access for all competitors. Some customers need service from two different wireline providers in order to have survivable, redundant networks. Clearly, using the unbundled loops of the incumbent provider does not provide redundant service and a building owner that restricts building entry by new carriers inhibits the ability of customers to obtain redundant service. Likewise, unbundled access to the incumbent's facilities may require that new entrants use inferior or undesirable technologies (*e.g.*, twisted copper rather than fiber optic cable) to serve their customers.

As the Commission observed in its Notice, cable television wiring often differs from telephone wiring.[12] Telephone wiring in multiunit buildings typically consists of dedicated twisted copper pair wiring running from each tenant to a common point. Cable television wiring often uses a single coaxial cable trunk to broadcast video services and tenants tap into the trunk for service, so there is not typically a common point at which cable television competitors would have access to all customers in a multiunit building. Like competitive telecommunications companies, in some buildings competitive cable television providers are often faced with running a parallel cable to access multiple points of demarcation and often seek access to the conduit and mouldings used by the incumbent provider.

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12 Notice at ¶¶ 6-9.

The Commission should consider extending unbundling and equal access requirements to incumbent cable television providers who provide telecommunications services. Today, cable television providers do not typically use their networks to provide telephone services, but certainly, many hope to provide such service in the future. It seems reasonable to expect that cable television networks will evolve to resemble telephony networks with wiring or channels dedicated to individual customers. It is also true that cable television providers are not the incumbent telephone carrier, so the Telecommunications Act provisions that mandate provision of unbundled network components arguably do not apply to cable television providers at this time.[13] However, the incumbent cable television provider will have a significant competitive advantage in telephone markets, often by virtue of having previously been granted exclusive, low or no cost entry rights by a building owner, over new entrants who must either run new wiring or buy unbundled loops from the incumbent telephone company to access customers. Equal access to demarcation points and unbundled network access should apply to incumbent cable television providers who modify their networks to provide telephone services and take advantage of the wiring rights obtained by virtue of being the incumbent provider.

It is important to note that MFS's proposal does not raise Fifth Amendment taking issues.[14] To the extent that building owners assess building access fees, requiring building owners to assess nondiscriminatory access fees, if any, does not constitute a taking of property. Similarly, requiring that local telephone companies sell unbundled loops is not a Fifth

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13 The Telecommunications Act gives the Commission some latitude in treating any local exchange carrier as the incumbent local exchange carrier, but at this point, there are few, if any, cable television providers who could reasonably be considered the incumbent local exchange carrier. See, Telecommunications Act §251(h)(2).

14 Notice at ¶ 64.

Amendment taking because they will be compensated for their unbundled offerings similar to how they are compensated for other common carrier offerings.

B. Competitive Service Providers Should Have Non-Discriminatory Access to Points of Entry to Facilitate Testing and Trouble Shooting

When using unbundled loops, MFS will have an occasional need to test and trouble shoot from the customer location. Access to a demarcation point on the outside of single dwelling residential buildings and at the minimum point of entry within multiunit buildings would help ensure that competitive carriers, like MFS, can perform such testing and trouble-shooting. Under the Commission's rules, in single dwellings structures, the demarcation point is within 12 inches of the protector or within 12 inches from where the wiring enters the customers' premises. As a practical matter that often means that a testing point will be outside the building and easily accessible. Even if the testing point is inside the building, access is not ordinarily a problem in instances where the occupant is also the building owner or otherwise authorized to allow access. A single dwelling customer who owns the building has no incentive to prohibit her telephone company from accessing the demarcation point to resolve service problems.

With multiunit buildings or campuses, a building owner does not have the same incentives as a single dwelling customer to allow access to the customers' service provider. Thus, it is necessary that the Commission establish that competitive service providers have the same rights of access to demarcation points for testing and trouble shooting as do incumbent providers. Establishing a single, common demarcation point at the minimum point of entry would be no more intrusive than the current means of providing all competitors with an easily accessible point for testing and trouble-shooting. If building owners establish other demarcation points, MFS recommends that the Commission require that building owners allow competitors with equal access rights to these demarcation points. Procedurally, telecommunications firms

who wish to access the demarcation point could contact building owners, indicate that they provide service to a building tenant and request access to that customer's demarcation point pursuant to the Commission's rules.

C. Enforcement of Nondiscrimination Requirements Should be the Joint Responsibility of the Commission, State Regulators and Local Franchising Authorities

In its Notice, the Commission observed that the local franchising authority is often the "first line of enforcement" of inside wiring rules, particularly rules affecting cable television services.[15] Similarly, the Commission noted that it has directed local franchising authorities to enforce federal technical standards. Similarly, state regulators are not preempted from setting rates, terms and conditions of simple inside wiring.

MFS recommends that local franchising authorities and state regulatory commissions play an active role in enforcing and resolving nondiscrimination requirements. Just as the Commission has delegated the responsibility for resolving complaints about interference with hearing aids to state commissions,[16] it could delegate shared responsibility for resolving disputes about inside wiring to state commissions and local franchising authorities. For example, complaints about a building owner that refuses to provide nondiscriminatory access to a building could be referred to a state commission for informal resolution within 30 days, just as complaints about hearing aid interference are referred to state regulators under the Commission's rules. Of course, if the matter is not resolved by state commissions, it would have to be resolved by the Commission under its complaint procedures.

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15 Notice at ¶52.

16 47 C.F.R. §68.414 (1995).

In many cases, because of their local knowledge state regulators and local franchising authorities can ensure greater flexibility and responsiveness to discrimination complaints. Discrimination in building access is often not simply a difference in prices, but may take the form of unreasonable delays in response to *bona fide* requests for building access, or nominally allowing building access by providing inadequate or undesirable wiring closets to new entrants. In such instances, evaluation and prompt resolution of such forms of should be addressed by authorities who are familiar with local buildings and reasonable local practices.

II. THE COMMISSION SHOULD VIGOROUSLY ENFORCE RULES DESIGNED TO MINIMIZE INTERFERENCE BETWEEN SERVICES USING THE SAME OR ADJACENT WIRING FACILITIES

When service providers share conduit, rack, cabling or ducts, there is a risk that one provider's improper use of adjacent facilities will interfere with others' services. For example, a local service provider that improperly uses ordinary twisted copper pair to provide high capacity service may create an electrical inference with other service providers who share the same conduits, racks, cabling or ducts. In most instances, all carriers sharing common facilities will have an incentive to minimize interference as interference typically degrades service for all carriers. While the need for Commission action is expected to be rare, MFS recommends that the Commission vigorously enforce its rules and standards designed to minimize such interference. The Commission's cable television rules that focus on minimizing leakage are a good template for rules to apply to telephone services provided by separate service providers using common facilities. Specifically, MFS recommends that the Commission modify its Part 68 complaint procedure rules to implement an informal dispute resolution process similar to the 30-day time frame the Commission requires of state regulators in resolving interference with

hearing aids.[17] For example, if complaint is filed alleging interference among providers sharing common facilities, the Commission should refer the complaint to state regulators for help in resolving the parties' dispute on an informal basis within 30 days.

III. THE COMMISSION SHOULD PERIODICALLY REVISIT ITS INSIDE WIRE RULES TO ENSURE THAT THEY DO NOT IMPEDE COMPETITION

It is impossible to know exactly how technological changes will affect the telecommunications industry and the delivery of telecommunications services. The widespread deployment of inexpensive wireless services, like PCS, may change the economic necessity to access inside wiring. For example, at some point, a competitor might access customers by installing an antenna (on the roof, in the apartment or using existing electrical wiring), which might reduce the economic necessity of access to existing inside wiring if and when such access methods are equal in quality and cost to wireline access. It is nevertheless critical that the Commission assure nondiscriminatory access to inside wire since restricted access can distort technology decisions and degrade customer service; a new entrant that cannot obtain equal wireline access may be forced to serve its customers in buildings with restricted access using an inferior and/or more expensive technology. In anticipation of such technological advancements, the Commission should commit to periodically revisit its inside wiring rules and policies. Similarly, the inside wiring rules and policies adopted by the Commission may, in some ways, prove to be a hindrance of competition, which cannot be known until the Commission gains more experience with widespread local competition. MFS suggests that the Commission review its inside wiring policies and rules in three years, or sooner if parties can demonstrate that existing rules harm competition.

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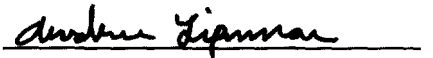
[17] 47 C.F.R. §68.414 (1995).

IV. CONCLUSION

Customers' access to their chosen service provider and competitors' access to customers are critically affected by the Commission's inside wiring rules and policies. Parity of access rights is critical to the development of competition. In these comments MFS suggests that the Commission prohibit discrimination in access to demarcation points and augment a general nondiscrimination requirement with specific rules requiring nondiscrimination in the application of building fees and the unbundled provision of loop facilities by incumbent local exchange carriers.

Respectfully submitted,



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